



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19-38, FCC 19-22]

Partitioning, Disaggregation, and Leasing of Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission explores how potential changes to partitioning, disaggregation, and leasing rules might close the digital divide and to increase spectrum access by small and rural carriers. The document also satisfies the requirement under the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act),¹ which requires that the Commission initiate a rulemaking to consider specific questions related to the partitioning or disaggregation of spectrum licenses and spectrum leasing as a potential means to increase availability of advanced telecommunications services in rural areas and spectrum access by small carriers.

DATES: Interested parties may file comments on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by WT Docket No. 19-38, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

¹ MOBILE NOW Act, Pub. L. 115-141, Division P, Title VI, § 601 *et seq.* (2018). The MOBILE NOW Act became law on March 23, 2018.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Generally if more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Commenters are only required to file copies in GN Docket No. 13-111.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Anna Gentry, Anna.Gentry@fcc.gov, of the Wireless Telecommunications Bureau, Mobility Division, (202) 418-2887. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918 or send an email to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking (NPRM) in WT Docket No. 19-38, FCC 19-22, released on March 15, 2019. The complete text of the NPRM is available for viewing via the Commission’s ECFS website by entering the docket number, WT Docket No. 19-38. The complete text of the NPRM is also available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street S.W., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563.

This proceeding shall continue to be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules (47 CFR 1.1200 et seq.). Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be

filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

I. Notice of Proposed Rulemaking

Rulemaking Requirement. Section 616 of the MOBILE NOW Act requires that, within a year of its enactment, the Commission must “initiate a rulemaking proceeding to assess whether to establish a program, or modify existing programs, under which a licensee that receives a license for exclusive use of spectrum in a specific geographic area under Section 301 of the Communications Act of 1934 (47 U.S.C. 301) may partition or disaggregate the license by sale or long-term lease.”² The purpose of any such new or modified program for partitioning and disaggregation would be to provide services consistent with the license and make unused spectrum available to “(I) an unaffiliated small carrier; or (II) an unaffiliated carrier to serve a rural area.”³ Section 616 conditions the adoption of a new or modified program on the Commission making a finding that it would “promote (i) the availability of advanced telecommunications services in rural areas; or (ii) spectrum availability for covered small carriers.”⁴

Considerations. Section 616 requires the Commission to consider four key questions in conducting the rulemaking. First, the Commission must examine whether reduced performance requirements with respect to the spectrum obtained through the program would facilitate deployment of advanced wireless services in rural areas.⁵ Second, the rulemaking must explore what conditions may be needed on transfers of spectrum under the program to allow covered small carriers to build out spectrum obtained under the program in a reasonable period of time.⁶ Third, the Commission must consider whether certain incentives may be appropriate to encourage licensees to lease or sell

² *Id.* § 616(b)(1).

³ *Id.* § 616(b)(1)(A).

⁴ *Id.* § 616(b)(1)(B).

⁵ *Id.* § 616(b)(2)(A).

⁶ MOBILE NOW Act, § 616(b)(2)(B).

spectrum, including (i) extending the term of a license; or (ii) modifying the performance requirements of the license relating to the leased or sold spectrum.⁷ Section 616 provides, however, that the Commission may offer incentives or reduced performance requirements only if it finds that doing so would be likely to result in increased availability of advanced telecommunications services in a rural area.⁸ Additionally, if a party fails to meet any buildout requirements set by the Commission for any spectrum sold or leased under a new or modified partitioning and disaggregation program, “the right to the spectrum shall be forfeited to the Commission unless the Commission finds that there is good cause for the failure of the party.”⁹ Finally, the Commission must evaluate the administrative feasibility of those or any other incentives the Commission might consider that further the goals of the rulemaking requirement.¹⁰

Definitions. In establishing its dual goals of making spectrum available to small carriers and promoting the availability of advanced telecommunications services in rural areas, Section 616 defines two key terms. First, the term “covered small carrier” is defined as a carrier¹¹ that “(A) has not more than 1,500 employees (as determined under section 121.106 of title 13, Code of Federal Regulations, or any successor thereto); and (B) offers services using the facilities of the carrier.”¹² Second, Section 616 defines the term “rural area” as any area other than “(A) a city, town, or incorporated area that has a population of more than 20,000 inhabitants; or (B) any urbanized area contiguous and adjacent to a city

⁷ *Id.* § 616(b)(2)(C).

⁸ *Id.* § 616(b)(3).

⁹ *Id.* § 616(b)(3).

¹⁰ *Id.* § 616(b)(2)(D).

¹¹ Section 616 directs the Commission to use the definition of “carrier” contained in section 3 of the Communications Act of 1934, which defines a carrier as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy . . . but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.” 47 U.S.C. § 153 (11).

¹² MOBILE NOW Act, § 616(a)(1).

or town that has a population of more than 50,000 inhabitants.”¹³ As a result, these definitions will apply to any use of the terms “covered small carrier” or “rural area” in this NPRM, notwithstanding any definitions of these terms in other Commission proceedings that may differ from those described by Section 616.¹⁴

The Commission’s existing partitioning, disaggregation, and leasing rules are designed to facilitate spectrum access and encourage secondary market transactions that will lead to efficient use of spectrum. The NPRM seeks comment on whether to establish a program, or modify existing programs, for the partitioning, disaggregation, and leasing of licenses. The NPRM also seeks comment on what, if any, changes would promote the availability of advanced telecommunications services in rural areas or spectrum availability for covered small carriers—such as allowing additional time to meet performance obligations under certain circumstances. The NPRM also asks commenters to address three considerations set forth in Section 616, including addressing the administrative feasibility of each consideration; they are: (1) whether reduced performance requirements applicable to partitioned or disaggregated licenses would promote the availability of advanced telecommunications services in rural areas or spectrum availability for covered small carriers; (2) what conditions may be needed to eliminate impediments to transfers of spectrum to covered small carriers to allow them to build out in a reasonable period of time; and (3) what incentives may encourage licensees to lease or sell spectrum to covered small carriers or unaffiliated carriers that will serve rural areas. The NPRM seeks to develop a record on the success of the Commission’s existing rules and therefore seek comment on whether

¹³ *Id.* § 616(a)(2).

¹⁴ For example, in many proceedings, the Commission has defined a “rural” county or census block as one with a population density of less than 100 people per square mile. *See, e.g., Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19086-88, paragraphs. 10 through 12 (2004).

further Commission action would likely promote the availability of advanced telecommunications services in rural areas and facilitate access to spectrum by covered small carriers.

Reduced Performance Requirements in Rural Areas. The NPRM seeks comment on whether reduced performance requirements for partitioned or disaggregated licenses would facilitate the deployment of advanced telecommunications services in rural areas. The Commission's rules permit parties to a partition or disaggregation to agree either to share the responsibility for meeting performance requirements or to satisfy the requirements individually. The NPRM seeks comment on potential modifications to these requirements that may be likely to increase service to rural areas, and on how to ensure that reduced performance requirements do not lead to reduced service in rural areas. The NPRM seeks comment on, for example, extending by one year a receiving party's construction deadline for a partitioned or disaggregated license when (i) the receiving party is a rural carrier or is acquiring spectrum that includes "rural areas," as defined by Section 616, and (ii) the receiving party elects to meet the construction requirement independently for its partitioned or disaggregated license area. The NPRM seeks comment on various aspects of implementing such an approach, or any other approach that commenters advocate.

The NPRM asks commenters advocating for these specific approaches, or for other approaches involving reduced performance requirements, to discuss how they would be implemented, including how and when they would take effect, to whom they would apply, and any specific conditions that should apply. Commenters should also describe in detail how any such implementation would serve to promote the availability of advanced telecommunications services in rural areas. Further, in light of Section 616's requirement that the Commission consider the administrative feasibility of implementing reduced performance requirements, commenters should discuss the costs and benefits of any proposed implementation.

Conditions on Transfers of Spectrum to Covered Small Carriers. As a threshold matter, the MOBILE NOW Act directs the Commission to focus on programs that would promote spectrum availability for “covered small carriers,” a term that encompasses only common carriers.¹⁵ While the NPRM seeks comment below on issues relating to “covered small carriers,” as required, the Commission also seeks comment on whether it should consider applying any rule revisions to an expanded class of licensees beyond those Congress requires the Commission to consider. The NPRM also seeks comment on what conditions may be needed on transfers of spectrum to allow covered small carriers to build out in a reasonable period. The NPRM asks whether there are procedural barriers to partitioning or disaggregation that limit the utility of those programs for covered small carriers, and if so, the nature of those barriers and the types of entities that are currently foreclosed. In addition to procedural barriers to partitioning and disaggregation, the NPRM seeks comment on whether there are substantive barriers with respect to covered small carriers’ ability to satisfy performance requirements applicable to the partitioned or disaggregated spectrum, and whether reduced construction obligations or extended performance deadlines could increase the number of covered small carriers that are willing and able to obtain spectrum through partitioning, disaggregation, or lease arrangements.

The NPRM seeks comment on these and any other relevant considerations regarding special conditions for covered small carriers that obtain access to spectrum through partition or disaggregation. Commenters should discuss in detail both the necessity and the likelihood of any such conditions resulting in increased spectrum availability for covered small carriers. Further, in light of the Section 616 requirement that the Commission consider the administrative feasibility of special conditions for covered small carriers, commenters should also discuss the costs and benefits of any conditions they advocate.

¹⁵ See 47 U.S.C. § 153(11).

Incentives to Encourage Lease or Sale. The NPRM seeks comment on what, if any, incentives might be appropriate to encourage licensees to lease or sell spectrum to covered small carriers or unaffiliated carriers that will serve rural areas, including license term extensions or modified performance requirements. The NPRM seeks comment on whether the Commission's existing secondary markets rules are sufficiently flexible to provide adequate incentives for licensees to sell or lease their spectrum rights to covered small carriers or unaffiliated carriers that seek to provide service to rural areas. The NPRM asks commenters to discuss the effectiveness of existing benefits of sale or lease, and whether further incentives would be likely to encourage licensees to lease or sell spectrum. For example, the NPRM seeks comment on whether and how modified performance requirements or longer license terms might encourage more licensees to sell or lease their spectrum rights. The Commission asks commenters to discuss the incremental benefits of increasing the number of spectrum sales or leases relative to the potential collateral effects that such incentives may have. For example, while reduced buildout requirements may increase the number of licensees willing to lease spectrum, it may also decrease deployment of advanced wireless services in those license areas as a result of the reduced performance requirements. The NPRM therefore seeks comment on the specific costs and benefits of any incentives that commenters advocate and the relative weight the Commission should apply in evaluating whether those incentives would be likely to result in increased availability of advanced telecommunications services in rural areas.

The NPRM also seeks comment on whether allowing spectrum "reaggregation" for spectrum that has been partitioned or disaggregated on the secondary market—up to the size of the original market area—would increase the incentives of parties to lease or sell spectrum in the first place, and thus ultimately meet the dual goals of increasing the availability of advanced telecommunications services in rural areas and facilitating access to spectrum by covered small carriers. Under the Commission's current rules, while licensees may partition and disaggregate their licenses through

spectrum transactions, there is no provision for reaggregating spectrum, even when the partitioned or disaggregated portions of an original market area are acquired by a single entity. Holding multiple licenses for what was once a single license may impose certain regulatory and administrative burdens on licensees, including construction requirements, renewal showings, continuous service requirements, and the need to maintain up-to-date information in ULS. In the context of other proceedings, some parties have asked the Commission to allow reaggregation of spectrum to ease these burdens.¹⁶ The NPRM seeks comment on the relationship between reducing these burdens and incentivizing spectrum transactions.

If commenters advocate for incentives such as modified performance requirements, longer license terms, spectrum reaggregation, or another incentive, the Commission directs them to describe in detail how the incentive would likely increase the availability of advanced telecommunications services in rural areas or facilitate access to spectrum by covered small carriers. Further, in light of the Section 616 requirement that the Commission consider the administrative feasibility of providing incentives to lease or sell spectrum, commenters should also discuss the costs and benefits of any incentives they advocate.

II. PROCEDURAL MATTERS

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this document. We request written public comment on the IRFA. Comments must be filed in accordance with the same deadlines as comments filed in response to the

¹⁶ See, e.g., Sprint Comments, WT Docket No. 10-112, at 19-20 (filed Aug. 6, 2010); AT&T Reply Comments, WT Docket No. 10-112, at 12 (filed Aug. 23, 2010).

NPRM as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Paperwork Reduction Act Analysis

The NPRM contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,
Federal Register Liaison Officer
Office of the Secretary.

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